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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 409

MISSISSIPPI RIVER FUEL CORPORATION
and
MURPHY CORPORATION, PETITIONERS
versus
RUFUS W. FONTENOT, COLLECTOR OF REVENUE
STATE OF LOUISIANA, RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

TO THE HONORABLE THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

CLYDE R. BROWN,
Ouachita Bank Building,
Monroe, Louisiana

CLARENCE L. YANCEY,
Commercial National Bank Building
Shreveport, Louisiana

C. McVEA OLIVER
Ouachita Bank Building,
Monroe, Louisiana
Attorneys for Petitioners

LECOMTE, SHREVEPORT, LOUISIANA

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RUFUS W. FONTENOT, COLLECTOR OF REVENUE
STATE OF LOUISIANA, RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

MISSISSIPPI RIVER FUEL CORPORATION and MURPHY CORPORATION, petitioners, pray that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in the above entitled and numbered cause on June 15, 1956.

I.

OPINIONS OF COURTS BELOW

The United States District Court for the Eastern District of Louisiana handed down no opinion. Its findings of fact and conclusions of law appear in the transcript of the record at pages 101 and 102. The opinion of the United States Court of Appeals is found at page 105 of the record and, as yet, has not been reported. It is included here as Appendix I.

II.

JURISDICTION

1. The judgment herein sought to be reviewed was entered by the Circuit Court of Appeals on June 15, 1956. A petition for rehearing was timely filed and was denied by order of court dated July 16, 1956 without assignment of written reasons. On July 24, 1956 an order was made by that Court staying the mandate pending filing of this petition of certiorari.

2. Jurisdiction of this Court is conferred by Title 28 U.S.C., Section 1254 (1).

III.

QUESTIONS PRESENTED

1. Can Louisiana impose license or excise taxes on the severance of oil and gas from and gathering of gas on a Federal Military reservation over which the United States has exclusive legislative jurisdiction by

virtue of (a) Article I, paragraph 8, clause 17, of the Constitution of the United States, and (b) cession of exclusive jurisdiction by the Legislature of Louisiana?

2. Is not the Congress the only authority of the United States which can retrocede to a state the right to levy and collect taxes within the confines of a military base over which the United States has acquired exclusive legislative jurisdiction as aforesaid?

3. Is not the imposition by a state of excise taxes in areas beyond her jurisdiction a deprivation by the state of the property of the taxpayer without due process of law, in violation of the Fourteenth Amendment?

4. Does a provision in an oil and gas lease from the United States obligating the lessee to pay all taxes "lawfully assessed" have the effect of conferring jurisdiction in a state to collect taxes which otherwise could not be imposed because of the exclusive legislative jurisdiction in the United States over the leased premises?

IV.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

1. The provisions of the United States Constitution involved in this case are Article I, paragraph 8, clause 17, and the Fourteenth Amendment.

Article I, paragraph 8, clause 17, is as follows:

"The congress shall have power * * * To exercise exclusive legislation in all cases whatsoever, over

such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings;"

The Fourteenth Amendment provides in Section I:

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The statutes of the State of Louisiana involved are Act 12 of the Louisiana Legislature for the year 1892, Act 31 of the Louisiana Legislature for the year 1942, and Louisiana Revised Statutes, Title 47, Sections 631, 632, 634 (1) and (3), and Sections 671, 673 (2)(a).

Said *Act 12 of 1892* provides:

"Section 1. Be it enacted by the General Assembly of the State of Louisiana, that the United States shall have power to purchase or condemn in the manner prescribed by law, upon making just compensation therefor, any land in the State of Louisiana, not already in use for public purposes, re-

quired for custom houses, court houses, arsenals, national cemeteries, or for other purposes of the government of the United States.

"Section 2. Be it further enacted, etc., That the United States may enter upon and occupy any land which may have been, or may be purchased or condemned, or otherwise acquired, and shall have the right of exclusive jurisdiction over the property so acquired during the time that the United States shall be or remain the owner thereof for all purposes, except the administration of the criminal laws of said State, and the service of civil process of said State therein, and shall hold the same exempt from all State, parochial, municipal or other taxation."

Said *Act 31 of 1942* is as follows:

"Section 1. Be it enacted by the Legislature of Louisiana, That Sections 1 and 2 of Act No. 12 of 1892 be amended and re-enacted so as to read as follows:

"Section 1. Be it enacted by the Legislature of Louisiana, That the consent of the State of Louisiana is hereby given, in accordance with the seventeenth clause, eighth section, of the first article of the Constitution of the United States, to the acquisition by the United States, by purchase, condemnation or otherwise, of any land in this State required for sites for forts, magazines, arsenals, dockyards, and others needful buildings, or for any other purposes of the Government of the United States.

"Section 2. That the United States may enter upon and occupy any land in the State of Louisiana which it has heretofore acquired, or may hereafter acquire, by purchase, condemnation, lease or other-

wise, required for sites for forts, magazines, arsenals, dockyards, and other needful buildings, or for any other purposes of the Government of the United States, and shall have the right of exclusive jurisdiction over the property so acquired, during the time that the United States shall be or remain the owner or lessee thereof, for all purposes, except that the State retains the right to serve therein all civil and criminal process issuing under authority of the said State, and all lands so held and title to which is vested in the United States shall be and remain exempt from all State, parochial, municipal or other taxation, assessment or other charges which may be levied or imposed by or under authority of this State."

Louisiana Revised Statutes, Title 47, provides:

"Section 631. Imposition of tax (Severance tax)

"Taxes as authorized by Section 21 of Article X of the Constitution of Louisiana, are hereby levied upon all natural resources severed from the soil or water, including all forms of timber, including pulp woods, and turpentine and other forest products; minerals such as oil, gas, natural gasoline, distillate, condensate, casinghead gasoline, sulphur, salt, coal, lignite and ores; also marble, stone, gravel, sand, shells, and other natural deposits; and the salt content in brine."

"Section 632. Taxes payable by owners; * * *

"These taxes shall be paid by the owner or proportionately by the owners thereof at the time of the severance and become due and exigible quarterly, as herein provided;***"

"Section 634. Definitions

"The following terms as used in this Part shall have the following meanings ascribed to them:

"(1) 'Owner' means owner at the time of severance.

"***.

"3. 'Severed" means the point at which the natural resources are severed from the surface of the earth or water."

"Section 671. Imposition of tax (Gathering tax)

"In addition to all other licenses and taxes levied and assessed in the State of Louisiana, there is hereby levied upon every person engaged in gathering gas produced in this state, an excise, license or privilege tax, for the privilege of engaging in such business, at the rate of one cent (1¢) per thousand (1,000) cubic feet (corrected to a base pressure of 15,025 pounds per square inch, absolute pressure) of gas gathered."

"Section 673. Definitions

* * *

"(2) (a). 'Gathering gas' means transporting gas, after its severance, from the well to the first meter at or near the well.

* * * "

V.

STATEMENT

Upon petitioners' obtaining production of oil and gas under a lease of a portion of Barksdale Air Force Base, Bossier Parish, Louisiana, the State of Louisiana insisted that petitioners pay oil and gas severance taxes levied under Louisiana Revised Statutes 47:631, et seq. and gas gathering taxes levied under Louisiana Revised Statutes 47:671.

The payment of these taxes was resisted by petitioners because the incidence of taxation occurred within the confines of said military base, an area over which the United States had exclusive jurisdiction.

In accordance with Louisiana Revised Statutes 47:1576, the taxes claimed by the State were paid under protest and suits were filed for recovery thereof in the United States District Court for the Eastern District of Louisiana, Baton Rouge Division, on March 10, 1955.

Jurisdiction of the United States District Court was invoked because there were involved the following:

(a) A question arising under Article I, paragraph 8, clause 17, of the Constitution of the United States.

(b) A question arising under Section I of Amendment XIV to the Federal Constitution.

(c) A question arising with respect to the cession by the State of Louisiana to the United States

of exclusive legislative jurisdiction over the military reservation involved.(1)

Also, there was in controversy in each case more than Three Thousand Dollars, exclusive of interest and costs.

After consolidated hearings the District Court rendered judgment by minute entry dated January 11, 1956. (R. 97). Findings of fact and conclusions of law were filed February 28, 1956. (R. 101).

Upon appeal the United States Court of Appeals for the Fifth Circuit affirmed the judgment of the District Court. Thereafter, it denied a timely filed petition for rehearing.

Involved is the right of the State of Louisiana to collect severance taxes and gas gathering taxes on oil and gas produced from and gathered on Barksdale Air Force Base, Bossier Parish, Louisiana, a military reservation over which the United States acquired exclusive jurisdiction under Article I, paragraph 8, clause 17, of the Constitution of the United States with the consent of the Legislature of Louisiana as given by Act 12 of 1892 and over which Louisiana ceded to the United States exclusive

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(1) Silas Mason Company v. Tax Commission of Washington, 302 U. S. 186.

jurisdiction by virtue of said Act 12 of 1892 and Act 31 of 1942.[2]

These cases were tried on a stipulation of facts which is found in the record commencing at page 43. Such stipulation sets out, among others, the following pertinent facts:

(a) That the lands comprising Barksdale Air Force Base were acquired by the United States in the year 1930 for the purpose of constructing and operating a military installation thereon;

(b) that since such acquisition the United States has maintained and operated an air force base on the property;

(c) that the entirety of the base, including the lands under lease to petitioners, have continuously been used for military purposes;

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(2) In 1940 (40 U.S.C. 255) The Congress provided tha exclusive jurisdiction would not attach to federal prop erty in states unless such exclusive jurisdiction was ac cepted through the head of the department having jur isdiction, custody and control of the property. Prio to that date, the consent of the state to the purchas was all that was necessary to vest exclusive jurisdic tion in the Fedral Government. **Fort Leavenwort Railroad Company v. Lowe,** 114 U.S. 525; **Surplu Trading Company v. Cook,** 281 U.S. 647; **United State v. Tucker,** 122 Fed. 518; **United States v. Wurtzbarge** 276 Fed. 753. As the area here was acquired prior t 1940, acceptance of jurisdiction was not necessary. Hov ever, on April 16, 1943, the Secretary of War accepte such jurisdiction over all lands in Louisiana acquire by the United States for military purposes over whic exclusive jurisdiction had not already been acquire (R. 95).

(d) that no Act of Congress grants to the State of Louisiana the power and jurisdiction to levy and collect the taxes involved here;

(e) that the lease under which oil and gas was produced had been executed under the authority of and in accordance with an opinion of the Attorney General of the United States of April 2, 1941. 40 Op. A.G. 41. (R. 94);

(f) that the incidence of each of the taxes occurs within the limits of Barksdale Air Force Base; and

(g) that continuously since acquiring the lands comprising Barksdale Air Force Base, the United States has exercised such jurisdiction thereover as may have vested in it by virtue of the Constitution and laws of the United States and of the State of Louisiana.

Without denying that the United States had exclusive jurisdiction over Barksdale Air Force Base, the Circuit Court of Appeals seems to hold:

(a) that the Louisiana Severance Tax [3] was not a tax on property of the United States and, therefore, could be collected; holding that "only after it reaches and is severed from the surface and becomes personal property does the tax fall upon the severer."

---

(3) The court did not deal with the Louisiana Gas Gathering Tax which is likewise an excise tax.

and that:

> "Whatever may be said of the abstract correctness of appellants' contentions, we think it quite clear that, as applied to this case they are all based upon the wholly incorrect assumption that the severance taxes in question represent an attempt on the part of the State of Louisiana to exercise legislative and executive jurisdiction over the lands in question by levying and collecting taxes upon property of the United States contrary to the provision of Act No. 12 of 1892: 'That United States shall have exclusive jurisdiction over the property during the time that the United States is the owner or lessee of the property. The property shall be exempt from all taxation, assessment, or charge levied under authority of the State.' "(4)

> (b) that the provisions in the lease to the effect that the lessee was "to pay when due, all taxes lawfully assessed and levied under the laws of the state or the United States * * *" was a fully effective obligation on the part of petitioners to pay the tax in question.

Thus, in the first instance the court ignored the issue of exclusive jurisdiction and decided the case con-

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(4) Contrary to the apparent interpretation by the court below of petitioners' contention, petitioners do not contend that Louisiana is attempting to collect taxes on property belonging to the United States. The taxes sought to be imposed on petitioners are excise taxes, one on the privilege of severing natural resources from land and the other on the occupation of gathering gas on the land. Petitioners' position is that under the Federal Constitution and the cession statutes the State possesses no power to tax or regulate property or persons on military reservations with respect to which the United States has exclusive jurisdiction.

trary to the decision of this Court in *Surplus Trading Company v. Cook*, 281 U. S. 647, *Standard Oil Company v. California*, 291 U. S. 242, *Bowen v. Johnston*, 306 U. S. 19, *United States v. Unzueta*, 281 U.S. 138, *Arlington Hotel Company v. Fant*, 278 U. S. 439, and, in the second instance, did not follow the decision of this Court in *United States v. County of Allegheny*, 322 U. S. 174, and *Domenech v. National City Bank*, 294 U.S. 199.

VI.

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT

1. The decision of the court below in not giving effect to the fact that the United States has exclusive jurisdiction over the military area in question is directly in conflict with decisions of this court:

(a) In *Surplus Trading Company v. Cook*, 281 U.S. 647, the officials of Pulaski County, Arkansas sought to collect a tax on personal property belonging to a private corporation but which was stored within the confines of Camp Pike, a federal military reservation over which the United States had acquired exclusive jurisdiction. The court held that Arkansas tax laws were ineffective in the area because exclusive jurisdiction was in the United States and that, therefore, because of the location of the property the tax could not be imposed.(5)

(5) This Court in Offutt Housing Company vs. County of Sarpy, No. 404, October Term, 1955, decided May 28, 1956, (not yet reported) cited this case as authority for the following: — "The power of 'exclusive Legislation has been held to prohibit a state tax on private property located on a military base acquired pursuant to Art. I, § 8, cl. 17. **Surplus Trading Co. v. Cook**, 281 U.S. 647."

(b) *Standard Oil Company v. California*, 291 U. S. 242, involved the right of the State of California to levy a license tax on distributors of motor fuel on each gallon sold and delivered by them in the State of California. The State of California attempted to collect this tax with respect to sales which occurred within the Presidio of San Francisco, a military area over which the United States had exclusive jurisdiction.

Following somewhat the same reasoning as the court below in the instant case, the Supreme Court of California held that the tax could be levied because it was the manifest intention of the act to include all sales completed within the geographical limits of the State of California and that for this reason the Presidio was to be included like all other territory. The Supreme Court of the United States, after noting that Californias act of cession (same being similar to Louisiana's) reserved to their state no power whatever with respect of taxation, reversed the decision of the California court and held that the tax was not collectible.

(c) In *United States v. Unzeuta*, 281 U.S. 138, the right of the State of Nebraska to try the defendant for murder committed in a freight car on a railroad right of way within the confines of Ft. Robinson military reservation was denied because the United States had exclusive jurisdiction over the area; the court holding that the fact that the United States had seen fit to permit this property to be used for private purposes was immaterial.

(d) *Arlington Hotel Company v. Fant*, 278 U.S. 439, and *Bowen v. Johnston*, 306 U.S. 19, are in accord with the foregoing decisions.

2. The decision of the court below with respect to the effect of exclusive jurisdiction in the United States is directly in conflict with decisions of other Circuit Courts of Appeal:

(a) The United States Court of Appeals for the Ninth Circuit in *Yellowstone Park Transportation Company v. Gallatin County*, 31 Fed. 2d 644, held that Gallatin County, Montana, tax officials could not impose a tax on personal property owned by a Delaware corporation and located within Yellowstone National Park because the United States had acquired exclusive jurisdiction over the area.

(b) The United States Court of Appeals for the Eighth Circuit in *Williams v. Arlington Hotel Company*, 22 Fed 2d 669, held that general Arkansas laws relating to obligations of innkeepers to their guests were ineffective within the confines of Hot Springs National Park because the United States had exclusive jurisdiction over the area.

3. The decision of the court below relative to the effect of the provisions in the oil and gas lease, as set forth in Section 2, paragraph 7(k) (R. 82)

(a) is in conflict with the decision of this Court in *United States v. County of Allegheny*, 322 U.S. 174, wherein it was held that a provision in a contract of lease which required the lessee to obey and abide by all "applicable laws" of the State of Pennsylvania did not give the state the right to apply its laws and tax certain machinery located on an area over which the United States had exclusive jurisdiction. Such language was held not to require the lessee to submit to unconstitutional exactions; the court saying "it

is clearly inadequate to waive said immunity, even if we assume a contracting officer had power to do so";

(b) is in conflict with *Domenech v. National City Bank*, 294 U.S. 199, which holds that Puerto Rico could not tax the capital of a national bank under any authority other than an Act of Congress clearly and explicitly conferring the privilege;

(c) is in conflict with *Offutt Housing Company v. County of Sarpy*, No. 404, October Term, decided May 28, 1956, wherein this Court said:

"***The power of 'exclusive Legislation' has been held to prohibit a state tax on private property located on a military base acquired pursuant to Art. I, § 8, cl. 17. *Surplus Trading Co. v. Cook*, 281 U.S. 647. *On the other hand, the State may acquire the right to tax private interests within such a location by permission of Congress*, see e. g., the Buck Act, 54 Stat, 1059 (permitting state sales, use, and income taxes),***"

4. The decision of the court below relative to the effect of Section 2, paragraph 7(k) of the lease involved is in conflict with the decision of the Circuit Court of Appeals for the Tenth Circuit in the case of *United States v. Wooten*, 40 Fed. 2d 882. There the United States, as guardian, brought suit to quiet title in the Pueblo Indians to certain lands in New Mexico. The defendants interposed a plea of limitations under authority of an Act of Congress requiring successful claimants to prove possession and, in addition, that they "have paid taxes lawfully assessed and levied thereon to the extent required by sta-

tutes of limitation, or adverse possession of the Territory of New Mexico***." These taxes had not been paid but the assessments were deficient because of errors in description or indefiniteness thereof. However, it was contended that the obligation to prove payment of taxes "lawfully assessed and levied" required proof of payment of taxes on the land irrespective of the regularity thereof. The Court rejected this argument stating that "the claim cannot be defeated because of the nonpayment of unlawful assessments."

5. The decision of the court below in permitting the State of Louisiana to apply its tax statutes within the confines of a federal military reservation over which the United States exercises exclusive legislative jurisdiction constitutes a taking of petitioners' property without due process of law and thereby violates the Fourteenth Amendment and is in conflict with decisions of this court in *Fort Leavenworth Railroad Company v. Lowe*, 114 U S. 525, *S.R.A. v. Minnesota*, 327 U.S. 558, *Standard Oil Company v. California*, supra, and numerous other cases which hold that a state cannot legislate with respect to areas over which the United States has acquired exclusive jurisdiction. Thus an attempt by a state to tax property or privileges without its jurisdiction amounts to a deprivation by the state of the property of the taxpayer without due process of law.

6. The decision of the court below in ignoring the decisions of this court as above set forth is in violation of stare decisis and accordingly fails to allow petitioners

the rights to which they are entitled under decisions of the Supreme Court of the United States.

7. Persons owning property situated on federal areas over which the United States exercises exclusive jurisdiction and those conducting business on such areas should have the same immunity, or lack of it, from state taxation or regulation in each state of the Union. Heretofore this Court has seemed to agree with this.

By issuing a writ of certiorari to the Supreme Court of California in *Standard Oil Company v. California*, supra, the state was not permitted to levy a license tax on motor fuels sold within the Presidio.

By issuing a writ of certiorari to the Supreme Court of Arkansas in *Arlington Hotel Company v. Fant*, supra, this Court agreed that an Arkansas statute fixing the liability of innkeepers was ineffective in a federal park over which the United States had acquired exclusive jurisdiction.

Throughout the years this Court has periodically granted certiorari when an attempt is made to apply state laws (without authority from Congress) in areas over which the United States has exclusive jurisdiction. A fundamental principle as to the effect of exclusive federal jurisdiction has been followed by this Court since the decision in *Surplus Trading Company v. Cook*, supra, but if the decision of the Circuit Court of Appeals in this case is allowed to stand, confusion will follow. Persons operating on federal areas in the Fifth Circuit will have one

set of rules, those in the Eighth and Ninth a different set. This is an unhealthy legal situation where an important federal question is presented.

Furthermore, it is noted that an appeal to this Court filed March 23, 1956, in the case of *Leslie Miller, Inc., et al. v. The State of Arkansas*, No. 793, was transferred to the summary calendar on May 28, 1956, because probable jurisdiction was noted. This case involved the right to invoke and apply a contractor's state license with respect to a federal area in the State of Arkansas. Whether or not exclusive jurisdiction had been acquired over the particular area was one of the primary issues, but apparently that would be immaterial if the case were before the Fifth Circuit. In view of the similar points involved it is submitted that the instant case should be docketed and argued with the Miller case.

CONCLUSION

While we realize that failure to grant certiorari is not an acknowledgment of the correctness of the decision below, we know that this Court is interested in maintaining uniformity in the jurisprudence issuing from the various Courts of Appeals, and particularly that such decisions not collide with the jurisprudence of this Court, so it is difficult to believe that a writ will not issue in this case because:

(a) The decision below is in sharp conflict with *Standard Oil Company vs. California*, supra, where this Court would not allow California to impose an excise tax

in an exclusively Federal area. This Court granted certiorari to correct the decision below.

(b) The decision below is contrary to other decisions of this Court to such extent that failure to grant a writ would be tantamount to depriving petitioners of their property to which they are entitled under the law as announced on many other occasions by this Court and most recently in *Offutt Housing Company vs. County of Sarpy*, supra, to the effect that:

> (1) "The power of 'exclusive legislation' has been held to prohibit a state tax on private property located on a military base acquired pursuant to Art. 1, Sec. 8, cl. 17. Surplus Trading Co. v. Cook, 281 U. S. 647." and
>
> (2) "On the other hand, the state may acquire the right to tax private interests within such location by permission of Congress, see e.g., the Buck Act, 54 Stat. 1059 (permitting state sales, use, and income taxes), * * *." [6]

In the Offutt case this Court granted certiorari to correct the decision below.

(c) The decision below is in conflict with decisions of the Courts of Appeals of other circuits, as already shown, such circuits having followed the pertinent decisions of this Court. Such decisions were not even cited by the Court below.

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(6) It was stipulated and is a fact that there is no Act of Congress granting to the state the right to levy the taxes here involved.

(d) By permitting Louisiana to extend her tax laws into areas beyond her jurisdiction, the decision is in conflict with the due process clause and with decisions of this Court and of the other Circuit Courts, thus inviting the states to venture further in exercising taxation and regulation over exclusive Federal areas in violation of the clear jurisprudence of this Court.

(e) The problems here presented, as well as others bound to follow in their wake, can easily be settled by allowing this case to be presented in company with *Miller vs. State of Arkansas*, supra, wherein certiorari has already been granted by this Court.

Respectfully submitted,

CLYDE R. BROWN
Ouachita Bank Building
Monroe, Louisiana

CLARENCE L. YANCEY
Commercial Bank Building
Shreveport, Louisiana

C. McVEA OLIVER
Ouachita Bank Building
Monroe, Louisiana

PROOF OF SERVICE

I, Clarence L. Yancey, one of the attorneys for Mississippi River Fuel Corporation and Murphy Corporation, petitioners herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 24 day of August, 1956, I served a copy of the foregoing petition for certiorari on the Collector of Revenue, State of Louisiana, by mailing a copy in a duly addressed envelope, with first class postage prepaid, to John B. Smullin, Esquire, his attorney of record at his office in the State Office Building, Baton Rouge, Louisiana.

Clarence L. Yancey,

Attorney for Mississippi River Fuel Corporation and Murphy Corporation

1500 Commercial National Bank Building,

Shreveport, Louisiana

APPENDIX I

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 15994

MISSISSIPPI RIVER FUEL CORPORATION and MURPHY CORPORATION,

Appellants,

versus

RUFUS W. FONTENOT, Colleector of Revenue, State of Louisiana,

Appellee.

Appeal from the United States District Court for the Eastern District of Louisiana.

(June 15, 1956.)

Before HUTCHESON, Chief Judge, and RIVES and JONES, Circuit Judges.

HUTCHESON, Chief Judge: In response to the state's demand for the severance tax[1] on oil and gas produced on

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[1] Laid and collected under Louisiana Revised Statutes of 1950, Title 47, Chapt. VI "Taxes on Natural Resources", Part 1, "General Serverance Tax, Arts. 631-646 inclusive.

Barksdale Field at Shreveport, Louisiana, the taxpayers paid under protest in compliance with the statute and brought this suit to recover the amount paid.

Based upon Article I, Sec. 8, Clause 17 of the Federal Constitution, giving to the Congress the power to exercise exclusive jurisdiction over places purchased by the United States with the consent of a state legislature, for the erection of forts, magazines, dock yards, and other needful buildings, and on Act 12 of 1892 Legislature, which purports to give the federal government exclusive jurisdiction over land acquired by it within the state, plaintiff's claim was that the state has surrendered its jurisdiction over the area, in and from which the oil and gas were produced, to the federal government, and, therefore, its laws imposing severance taxes on oil and gas produced on property of the government could not extend to and operate in that area.

The defenses were: (1) that Barksdale Field was acquired by donation from the City of Shreveport, and was not, within the meaning of the invoked provision of the Federal Constitution, purchased by the consent of the legislature: (2) that Act 12 of the Louisiana Legislature of 1892, relied on as giving legislative consent, is unconstitutional in that it is in violation of the article of the Louisiana Constitution, which provides that funds, credits, etc. cannot be loaned, and in violation of the article which provides that the power to tax corporations shall not be surrendered or suspended; (3) the tax is collectible in any event because, by paragraph (k) page 6, the lessees, upon consideration, contracted to pay the

tax; and (4) the issue involved here was decided by the Louisiana Supreme Court against plaintiff in a suit[2] between the same parties, submitted on a stipulation of record in substance the same as that made here.

The district judge finding and concluding: (1) that the Louisiana severance tax is not a tax upon property but upon the privilege of severing natural resources from the soil, and in this case no part of the tax burden fell upon the federal government but was payable by the lessee who owned the working interest in the resource produced; (2) that the deeds by which the federal government acquired the title were donations and not sales, and the land did not fall within the purview of Art. I, Sec. 8 Clause 17 of the Federal Constitution, and that exclausive territorial jurisdiction was not ceded by the State of Louisiana to the Federal Government; and (3) under paragraph (k) of the lease the lessees were obligated to pay the tax; rendered the judgment appealed from.

Appellants stating by way of preface: that they are not seeking to avoid the payment of the taxes because they are the lessees of the United States or because of any relationship, contractual or otherwise, with the Federal Government; and that they do not in any way question or seek the limit the scope of the principle[3] denying to persons

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2 Murphy Corporation v. Fontenot, 73 So(2) 180.

3 "These decisions in a variety of applications enforce what we deem to be the controlling view—that immunity from nondiscriminatory taxation sought by a private person for his property or gains because he is engaged in operations under a government contract or lease cannot be supported by merely theoretical conceptions of interference with the functions of government. Regard must be had to substance and direct effects. And where it merely appears that one operating under a gov-

dealing with the government immunity from state taxation; vigorously insist that the United States has exclusive jurisdiction over Barksdale Field and confidently invoke, as applicable here, the settled principle that a state may not exercise any legislative authority, including its taxing power in relation to property and activities of individuals and corporations within the territory where the United States has such jurisdiction.

Insisting that what and all that is presented here is a conflict in jurisdiction between the State of Louisiana on the one hand and the United States on the other over Barksdale Airforce Base, one of the largest military installations in the nation, appellants' argument proceeds thus:

> "The primary question in these suits, therefore, is whether the United States is vested with exclusive jurisdiction over Barksdale Air Force Base, the area from which minerals are being produced, and the area on which gas is gathered. If such jurisdiction is vested in the United States, then the taxes claimed cannot be collected for it is axiomatic that the taxing power of a state is limited to persons within, and subject to, such state's jurisdiction. The principle is succinctly stated in 84 C.J.S., Taxation, paragraph 11, page 61:
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> 'Since state laws do not operate beyond its jurisdictional limits, the taxing power of a state

ernment contract or lease is subjected to a tax with respect to his profits on the same basis as others who are engaged in similar businesses, there is no sufficient ground for holding that the effect upon the government is other than indirect and remote. * * *" Helvering v. Mountain Producers Corp., 303 U.S. 376.

> is limited to persons and property within, and subject to, its jurisdiction, and the same rule applies to the taxing power of a territory. * * *" "

Proceeding upon and from this premise, it attacks the Murphy case, *supra*, as wrongly decided, and the opinion as basically unsound. Insisting that the theory of appellee and of the court below, that because the land was not paid for with money but was donated "it was not purchased" within the constitutional provision, is wholly untenable, it urges upon us that every fact in the case leads to, indeed compels, the conclusion that exclusive legislative jurisdiction over the property from which the oil and gas comes was vested in the United States, and that the privilege taxes imposed by, and sought to be collected under, the severance statutes are, therefore, without legal basis.

As to the contention that one of the considerations for the lease was the agreement of lessee to pay the taxes and that appellants cannot take the benefits of the lease without also accepting and discharging its burdens, appellant, citing in support *United States v. Wooten*, 40 F (2) 882, *Domenech v. National City Bank*, 294 U.S. 199, *United States v. County of Allegheny*, 322 U.S. 174, and pointing to the express language of clause (k) of the lease to pay when due all taxes lawfully assessed and levied, insists that it applies to, and only to, taxes validly assessed; that the state, being without legislative jurisdiction with respect to Barksdale Field, is without authority to assess the taxes in question here; and that, therefore, the clause in the lease cannot, and does not, apply.

Without undertaking to canvass or discuss the claimed errors in the conclusions of the Supreme Court in the Murphy case and of the district judge in this one, we will content ourselves with saying that we agree with the result reached in both cases, and, that for the reasons hereafter briefly stated, we are of the clear opinion that the judgment appealed from was right and must be affirmed.

Whatever may be said of the abstract correctness of appellants' contentions, we think it quite clear that, as applied to this case they are all based upon the wholly incorrect assumption that the severance taxes in question represent an attempt on the part of the State of Louisiana to exercise legislative and executive jurisdiction over the lands in question by levying and collecting taxes upon property of the United States contrary to the provision of Act No. 12 of 1892: "The United States shall have exclusive jurisdiction over the property during the time that the United States is the owner or lessee of the property. The property shall be exempt from all taxation, assessment, or charge levied under authority of the State."

That this is a wholly incorrect assumption is we think plainly shown in the language of the statute under which the tax is laid, note 1, *supra.*

Article 631 provides that the taxes are levied on all natural resources severed from the soil or water. Article 632 provides that taxes shall be paid by the owner at the time of the severance, and become due and payable quarterly as herein provided. Article 634 provides, "(3) Severed means the point at which the natural resources are severed from the surface of the earth." Article 635 provides that

every person severing any natural resources shall within thirty days thereafter file with the collector a statement under oath of the business conducted by him during the last quarter, and at that time shall pay the tax.

It thus appears that the object and purpose of the general severance tax and its effect is not to levy a tax upon the lands included in the base or upon the oil or gas while a part of the base. The tax is expressly made to apply not while the oil or gas is in the earth but when it is severed from its surface, and then it obliges the person severing to file a statement of his business and to pay the tax. In Louisiana, as is well known, there is no ownership of oil and gas in place, and neither in theory nor in fact is the tax here in question imposed upon it while it is a part of the soil or ground. Only after it reaches and is severed from the surface and becomes personal property does the tax fall upon the severer.

Putting to one side all the refinements which have attended the long struggles over jurisdiction, [4] as instanced in the cases, and over the effort to throw over private operations the protective mantle of governmental immunity, all that is presented for decision in this case is whether a severer of oil and gas, who, if he had taken it from any other land in the state, would unquestionably be liable under the general laws of the state for the severance tax, can carve out of the fact, that it came from land which was a part of Barksdale Field, an exemption for himself against having to pay the tax on severing the oil and gas from the surface and appro-

[4] Cf. Offutt Housing Co. v. County of Sarpy and Robert M. Eby, Treasurer of the County of Sarpy, Neb. . . . . U.S. . . . . (5-28-56)

priating it to his own use. For the same reason that the statute under which the exaction is made is a general excise statute, not directed at any particular person or property but at all persons who are severers, it cannot be said that the provision in the lease obliging the lessees, as one of the considerations for it, to pay the taxes, was not fully effective.

In short, the provision must and will be construed so as to give it effect and as saying in effect that if, under the general laws of the state, the operator would be liable, he cannot draw around himself a cloak of immunity because the United States is lessor, but must, as a part of the consideration for the lease and his obligation under the statute, pay the taxes which the severance tax statutes impose. Cf. *Superior Oil v. Fontenot*, 213 F(2) 565.

The judgment was right. It is AFFIRMED.